

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

**Hearing Date: August 23, 2023
at 9:00 a.m.**

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IN RE:

CASE NO.: 23-22166-cgm

Virginia A. Sayegh a/k/a Virginia Tognetti,

CHAPTER 13

Debtor.
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Hon. Cecelia G. Morris

NOTICE OF MOTION FOR RELIEF FROM THE AUTOMATIC STAY

PLEASE TAKE NOTICE, that upon the application of Select Portfolio Servicing, Inc., the undersigned shall move this Court for an Order, pursuant to 11 U.S.C. §362(d)(1), of the Bankruptcy Code, vacating the automatic stay to permit movant to enforce its mortgage on the Debtor's premises located at 28 Hillside Avenue, Yonkers, NY 10703 and for such other and further relief as is just and proper.

PLEASE TAKE FURTHER NOTICE that the hearing shall not be held in person but shall be held via Zoomgov. Those intending to appear at the hearing must register using the eCourt Appearances tool located on the Court's website: <https://www.nysb.uscourts.gov/ecourt-appearances> 48 hours before the scheduled hearing date. The information to appear at the hearing will be emailed to those that register with eCourt Appearances in advance of the hearing.

PLEASE TAKE NOTICE, that answering affidavits, if any, must be served so as to be received not later than seven (7) days before the hearing date of this motion.

Dated: Williamsville, New York
July 28, 2023

FRENKEL, LAMBERT, WEISS,
WEISMAN & GORDON, LLP

BY: /s/ Michelle C. Marans
Michelle C. Marans, Esq.
53 Gibson Street
Bay Shore, New York 11706
(631) 969 3100
Our File No.: 01-084797-B02

TO: Virginia A. Sayegh
28 Hillside Avenue
Yonkers, NY 10703

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206-15 Hillside Avenue
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Queens Village, NY 11427

Krista M. Preuss
Chapter 13 Standing Trustee
399 Knollwood Road
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United States Trustee
Office of the United States Trustee - NY
Alexander Hamilton Custom House
One Bowling Green, Room 534
New York, NY 10004-1408

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MOTION FOR RELIEF FROM THE AUTOMATIC STAY

Michelle C. Marans, an attorney admitted to practice law, in the courts of the State of New York and in this Court, hereby affirms the following to be true under penalty of perjury:

1. I am an attorney with Frenkel, Lambert, Weiss, Weisman & Gordon, LLP, attorneys for Select Portfolio Servicing, Inc. (hereinafter “Movant”), a secured creditor of the Debtor. I am fully familiar with the facts of this case and submit this affirmation in support of Movant’s motion for relief from the automatic stay.

2. This is a contested matter brought pursuant to Federal Rules of Bankruptcy Procedure Rule 4001, 9013 and 9014 and Section §362(d)(1) of Title 11 of the United States Code (the “Bankruptcy Code”) for an Order (1) granting Movant relief from the automatic stay due to the failure of the Debtor to make payments, and/or provide Movant with adequate protection for its security interest in the real property located at 28 Hillside Avenue, Yonkers, NY 10703 (“Property”); and (2) granting Movant such other and further relief as the Court deems just and proper.

3. Movant is the holder of a Note and Mortgage to secure payment in the original principal sum of \$295,000.00 (hereinafter “Note” and “Mortgage” respectively), pledging the Property as security. Thereafter the Note and Mortgage were modified. A copy of the Note and Mortgage and Modification Agreement are attached hereto as **Exhibit A**.

4. The Note and Mortgage were transferred to Movant by a properly endorsed Note. A note and mortgage may be transferred by either a written assignment or the physical delivery of the note. The mortgage passes with the debt as an inseparable incident. See Flyer v. Sullivan, 284 A.D. 687, 134 N.Y.S.2d 521 (1st Dept. 1954); Mortgage Electronic Registration Sys. Inc., v. Coakley, 41 A.D. 3d 674, 838 N.Y.S.2d 622 (2nd Dept. 2007); see also In Re: Feinberg, 442 B.R. 215 (S.D.N.Y. 2010).

5. The annexed assignment of mortgage (“Assignment”) also evidences the transfer to Movant. A copy of the Assignment is attached hereto as **Exhibit B**.

6. The Debtor defaulted under the terms of the Note and Mortgage prior to the date the bankruptcy petition was filed. As a result of the default, Movant obtained a Judgment of Foreclosure and Sale. A copy of the Judgment of Foreclosure and Sale is attached hereto as **Exhibit C**.

7. On February 28, 2023, the Debtor herein filed a petition under Chapter 13 of the Bankruptcy Code and pursuant thereto an automatic stay was imposed.

8. Annexed hereto, as required by S.D.NY Administrative Order #347, is a completed Background Information Declaration (“Declaration”). As indicated in the Declaration, the Debtor has failed to tender post-petition payments in contradiction with the Bankruptcy Code. The Declaration is attached hereto as **Exhibit D**.

9. By failing to make the aforesaid mortgage payments, Debtor has failed to provide Movant with adequate protection for its security, contrary to the requirements of the Bankruptcy Code.

10. Movant will provide the trustee of notice of any surplus monies upon the sale of the Property.

WHEREFORE, Movant respectfully requests an order vacating the automatic stay as it pertains to the premises located at 28 Hillside Avenue, Yonkers, NY 10703 and for such other and further relief as is just and proper.

Dated: Williamsville, New York
July 28, 2023

Respectfully Submitted,

FRENKEL, LAMBERT, WEISS,
WEISMAN & GORDON, LLP

BY: /s/ Michelle C. Marans
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